The Children's LAW Center of Connecticut

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RE: Raised Bill No. 494: An Act Concerning Guardians *Ad Litem* and Attorneys for Minor Children in Family Relations Matters

POSITION: Support in Part / Oppose in Part

SUBMITTED BY: THE CHILDREN'S LAW CENTER OF CONNECTICUT, a non-profit organization that provides Guardian *ad litem* or representation services to children of indigent parents in contested divorce and custody cases.

Family court legislation must focus on the needs of the child. We are concerned that the proposed legislation detracts from this priority. The detrimental consequences of implementing this proposed bill on the majority of cases far outweigh the reforms to the system that its drafters intended.

Rather than creating more administrative requirements in an already bloated system, solutions should be focused on the training and continuing education of attorneys who are willing and able to take on the GAL role in these most difficult and challenging cases.

The Children's Law Center is committed to presenting and participating in trainings meant to improve the GAL practice. The discussion should be aimed at whether continuing education requirements are appropriate for this specialized role and, if so, how to effectuate that in a meaningful way. Mentoring is also a key to our practice. For those working as solo-practitioners or who are bringing a new area of practice to a firm, mentoring is not readily available.

Focusing on providing support, education, and constructive oversight to GALs, rather than negatively targeting us, will foster the profession and enhance the representation of children. With this more positive approach, both sides of this debate will reach their stated goals while also keeping focused on the best interest of the child.

We whole-heartedly support Section 6, which requires that parents be informed about the roles and responsibilities of a GAL (as well as the limitations of that role) when a GAL is appointed by the court in their family court matter. We also agree, in essence, with Section 1(c) (1) which requires that the court define the scope of the GAL's role in any given case, although it is sometimes difficult to ascertain at the start of the case what issues may present themselves.

*For simplicity, in this testimony the sole term "GAL" indicates both "guardians ad litem" and "counsel for the minor child."

However:

The legislation, as written, does not take into account the needs of children and places an overwhelming burden on an already beleaguered system without producing meaningful improvements.

One such example is Section 1 (b) which requires that the court provide parents with a list of five possible GALs to represent the child. It follows this requirement with a number of continuances in order to effectuate that appointment.

On its face, this seems benign. However, consider:

- **The emergency situation:** Many times, GALs are appointed to Ex Parte motions and Restraining Orders that require immediate assessment. A judge may even find a traditional Custody and Visitation application to warrant immediate action. We are brought in to these uncertain situations without delay and required to gather as much information as possible for the court, sometimes having only one or two weeks to report back. ***What consideration is given to the child in this situation?***

- **The parents' situation:** The mere fact that a GAL is being appointed to a case would indicate that the parents are in such a place of disagreement that they need additional intervention. Yet, this proposed legislation asks them to discuss a list of possible GALs and reach an agreement on who would best represent their child. This requirement creates another opportunity for conflict and does not contemplate the possible complications, such the situation that will be created when each parent is set on a different GAL and the judge defers to one over the other. ***Why create another avenue of conflict, thereby exacerbating the situation for the child?***

- **Lack of information:** There has been a general misperception of anti-parent collusion between different family court professionals. Presumably, this proposed legislation will put the control back in the parents' hands and prevent this supposed complicity. *Consider, however, that most parents entering the family court system have very little real life exposure to the work of any individual GAL.* Instead of labeling them as colluders, it should be acknowledged that Judges and court personnel are actually in the ideal position to know which GALs are best suited to each case. They have seen how GALs practice. They know the level of expertise of each GAL. They understand the different styles each GAL uses to approach a case. The fact is, they can identify and effectuate the best fit for each family. ***Why must a child be denied the best possible representation in order to placate the misperceptions of families who have been chronically caught up in the family court system?***

- **The effectuation:** The administration of this requirement as outlined in the suggested legislation is vague and potentially disastrous. The language provides that parties shall provide written notification to the court of the name of the person they have selected to serve as GAL for their matter. Presuming this does not mean filing another motion and putting aside that parties are not permitted to submit ex parte communications to the court; this requirement poses a number of issues. Who will write this communication, one or both parents? What authentication will be required, notarization or none? Will additional hearings have to be held to argue whether both parents actually agreed to the choice? How quickly will clerks be required to code and file these letters? The potential administrative complications are endless, particularly for self-represented parties. ***Our goal should be to make the family court process easier for courts and families, thereby minimizing delay, conflict, and the impact of conflict on the child.***

Section 4 poses similar difficulties. We certainly *agree* that parties to a family court matter should have standing to file a motion that seeks the removal of a GAL *for cause.*

However, consider:

- **No limitations:** The language of the proposed legislation does not define the grounds upon which a motion may be filed or will be heard. There is no "for cause" limitation. In fact, there is no limitation at all. In a majority of cases, GALs are disliked by at least one of the parents; often, at least one and, at times, both of the parents would like to remove the GAL. One must only look to the records of the Statewide Grievance Committee to get a flavor for the types of motions courts will be hearing and the overwhelming volume in which they will be filed. The proposed legislation is also silent on how frequently motions may be filed. Will dissatisfied parents be allowed to file a motion every week until they achieve their desired outcome? There is also no provision regarding the disposition of the motions, should they be denied.

- **Time and resources:** The proposed legislation does not provide for an "on-the-papers" screening before these motions are heard by a judge or referred to Family Relations for mediation, meaning that every motion will require the time of a clerk, a GAL, a judge, and a family relations officer. It also creates an untenable role for the Family Relations Office, which will have an officer be conflicted out of evaluating, mediating, or negotiating any case in which they have mediated a claim to remove a GAL. The legislation, as written, will unnecessarily overwhelm an already understaffed system and, in fact, make reaching resolution in a timely manner more difficult.

- **GAL time/compensation:** Without any limitations under which a party may seek to have a GAL removed and without a pre-screening mechanism, GALs will undoubtedly spend an inordinate amount of time mediating or defending against requests for removal. The legislation, as written, does not clearly provide for how, and by whom the GAL's time will be compensated, should the motion be found to be lacking and denied.

Private GALs practice in the private sector and their fees should not be determined by the court.

Some supporters of limiting GAL fees point to the Children's Law Center as an example of doing the same work for less.

This is an unfair comparison.

The Children's Law Center exists to provide representation for a certain population of children, those who would be denied representation by default because their parents are indigent. The Children's Law Center does not function on state fees alone! As a private non-profit, we rely heavily on private funders, donors, and volunteers in order to keep our doors open. In fact, it would be impossible to run this business accepting state-rate cases alone.

While parents should be made aware of the retainer and hourly fees they are going to be charged by a GAL at the start of a case (and they are, in their contract/retainer agreement), it is unconscionable to legislate that a court may determine a private GAL's fees. There is no provision here requiring the consent of that attorney or allowing for that attorney to decline a case. In fact, it seems to give the court the authority to reduce fees even after-the-fact.

We agree that all children should have access to quality representation, but not allowing attorneys to set their fees based on education and experience (particularly in relation to what the parents are willing to pay for their own attorneys), distorts the value of GAL services. There is certainly a market for "sliding scale fee" attorneys, and many attorneys are willing to accept these lower fees. These attorneys are, more than likely, those newly entering the field. If parents and the Legislature want what we all want, which is quality representation for children, then they should help support this middle-income market by providing for enforcement of fees as well as mentoring and educational support. Any other solution will only drive out experienced GALs, reducing the pool of skilled professionals willing to mentor and support new GALs.

Unfortunately, regardless of the hours and quality of work produced both for families and the courts, the reality is that many GALs are the last people to get paid (if ever) and, many times, courts will unilaterally cut GAL fees after-the-fact to pacify an unhappy parent – all without regard to the economic effects on the GAL or the legitimacy of the hours spent working with a family.

Imagine that you provide a catering service. You usually charge $80 per person. A judge orders you to charge $40 per person but to provide the same quality of food. You provide catering for 250 people and, after-the-fact, the hosts refuse to pay. You try to enforce the $10,000 payment in court only to have the judge reduce the bill to $5000 and have the hosts pay you $20 a month until it is paid off. When using a tangible example, this is clearly unjust. However, this is what happens to private pay GALs repeatedly in family court. And yet they continue to take cases, even while facing the recent vitriol.

As a matter of public policy:

Section 5 (a) states, in essence, that if the child is receiving or has received state aid or care, the compensation of the GAL shall be paid by the Public Defender Services Commission.

While this guideline certainly does make it easier for judges to order that a GAL be paid by the state, the standard is too broad. It does not take into account parents who are in disproportionate financial situations. It also does not take into account either parent's ability to pay at the time of the appointment. For example, if a family received state assistance for six months five years ago while a parent was completing medical school, that family would qualify for state rates under this language – even if that parent is now a successful doctor.

There is already a procedure in place to qualify people for state rate attorneys in the other court venues such as criminal and juvenile court. It is counterproductive to initiate a different standard for family court, a standard that many taxpayers will likely resent when considering the real application of the language.

Conclusion

Few would disagree that the adversarial system alone is not ideal for restructuring families, and that changes have been and should continue to be made to improve outcomes for families. Family court attorney, GALs, and mental health professionals who work in the family court arena volunteer hundreds, if not thousands of hours each year trying to help families resolve their issues in a positive way. The Special Masters, EIP, and Volunteer Attorney programs (in fact our own FIT program) would not exist if not for the volunteer hours of these dedicated professionals.

Unfortunately, instead of providing the tools and support necessary to continue to do this vital work, the recent "reform movement" has demonized these professionals. This has gone on too long and unchecked.

Rather than unleashing unnecessary administrative duties onto our already depleted system, let us focus on increasing services and providing the training necessary to continually improve the quality services being provided. Let us remember that, regardless of the services that have been put in place to try to help families resolve their cases, there are instances where more protracted court involvement and even trials are necessary or unavoidable. **These are the minority of cases and should not be the sole basis for widespread changes.**

Certainly, it is important to ensure that professionals practice ethically but, minimizing the value of the GAL's work is perilous. To improve representation and family outcomes, reliable and accessible services must be made available and supported. We must make these services a priority and not relegate these families to waiting lists and frequent, long lasting court dates. Parents must be educated about successful co-parenting and be given the opportunity and resources to restructure their families in a healthy way, *before* becoming adversaries.